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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/580,584	06/21/2006	Shinji Shimada	128063	5550
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EXAMINER HICKS, ROBERT J				
ART UNIT 3781		PAPER NUMBER		
NOTIFICATION DATE 12/03/2010		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

OfficeAction25944@oliff.com
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Office Action Summary

Application No.

10/580,584

Applicant(s)

SHIMADA, SHINJI

Examiner

ROBERT J. HICKS

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4 and 13-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4 and 13-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Paper No(s)/Mail Date _____
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 9, 2010 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

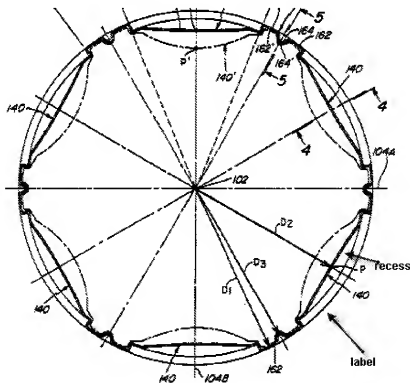
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1, 4, 14, 17, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krishnakumar et al. (5,704,503) [Krishnakumar '503] in view of Itaba et al. (5,227,233) [Itaba].

Regarding Amended Claim 1, the patent to Krishnakumar '503 – a hot fillable bottle with label – discloses a synthetic resin container comprising a container body of a first material [130, Col. 3 Lines 10-12], said container body having a main body portion formed with a plurality of sectioned recesses, said container further comprising: a label [150] arranged at said main body portion of the container body and surrounding the main body portion, wherein the label is immovably arranged on the main body [138, 142, and Col. 3 Lines 20-27]; closed air layers are provided between the plurality of sectioned recesses and the label; and the plurality of sectioned recesses do not include a protrusion within the plurality of sectioned recesses that contacts the label [Fig. 2]. The label is placed on the body and attached at the glue lands in order to be immovably arranged.



Krishnakumar '503 does not expressly disclose that the label is made of the same material as the container bottle to provide rigidity; however, the patent to Itaba – a polyethylene container and label – discloses that said label [Itaba, 2] comprises the same material as said container [Itaba, 1, Col. 3 Lines 41-46] for purposes of waste disposal [Itaba, Col. 3 Lines 42-46, and Col. 5 Lines 1-6], in which the label is rigid [Itaba, Col. 3 Lines 32-36]. The label and bottle are both made of polyethylene, and the label can be placed in the mold when making the container. In addition, the printing on the label can be used to represent a recycling bottle and the label and bottle can both be recycled together. Krishnakumar '503 and Itaba are both from the art of plastic bottles with labels placed on the container sidewall, and it would have been obvious at the time of the invention to one of ordinary skill, with market forces driving one of ordinary skill to change the prior art, to modify the label in the Krishnakumar '503 container to be the same material as the container, as suggested by Itaba, to reduce manufacturing material costs, and so that the label can bond to the container through the manufacturing process [Itaba, Col. 3 Lines 37-46].

Regarding Claim 4, Krishnakumar '503 in view of Itaba discloses all the limitations substantially as claimed, as applied to amended claim 1 above; further, the combination discloses said label is a tack label [Itaba, Col. 6 Lines 32-34]. The label can be tacked onto the mold and the container, when the container is being molded. It would have been obvious at the time of the invention to one of ordinary skill, with market forces driving one of ordinary skill to change the prior art, to modify the label in the Krishnakumar '503 container to be a tack label, as suggested by Itaba, as the label "can

be stuck on the surface of the bottle in the mold concurrently with blow molding of the bottle.” [Itaba, Col. 6 Lines 32-34]

Regarding Claim 14, Krishnakumar ‘503 in view of Itaba discloses all the limitations substantially as claimed, as applied to amended claim 1 above; further, the combination discloses the container has a longitudinal axis [Krishnakumar ‘503, 102] and the label is adhered at upper and lower end regions of the label along the longitudinal axis [Krishnakumar ‘503, 138 and 142].

Regarding Claim 17, Krishnakumar ‘503 in view of Itaba discloses all the limitations substantially as claimed, as applied to amended claim 1 above; further, the combination discloses the first material is PET [Krishnakumar ‘503, Col. 3 Lines 10-12].

Regarding Claim 19, Krishnakumar ‘503 in view of Itaba discloses all the limitations substantially as claimed, as applied to amended claim 1 above; further, the combination discloses the label is immovably arranged on the main body portion through an adhesive layer [Krishnakumar ‘503, Col. 3 Lines 20-27].

5. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Krishnakumar ‘503 in view of Itaba as applied to amended claim 1 above and further in view of Hoffman (4,976,798).

Krishnakumar ‘503 in view of Itaba discloses all the limitations substantially as claimed, as applied to amended claim 1 above. The Krishnakumar ‘503 and Itaba combination does not expressly disclose that the label is a heat-shrinkable label; however, the patent to Hoffman - a method of applying a plastic wrap to a container -

discloses a heat-shrinkable label with a heat-sensitive adhesive agent [Hoffman, 40] that is applied to a container [Hoffman, 42, Col. 4 Lines 15-18]. The label is attached to the container. Krishnakumar '503, Itaba, and Hoffman are all from the art of bottles with labels applied on the sidewall, and it would have been obvious at the time of the invention to one of ordinary skill, with market forces driving one of ordinary skill to change the prior art, to modify the label in the Krishnakumar '503 and Itaba combination container assembly to be a heat-shrinkable label with a heat-sensitive adhesive, as suggested by Hoffman, in order to apply a label directly to the container [Hoffman, Col. 1 Lines 66-67].

6. Claims 13, 15, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krishnakumar '503 in view of Itaba as applied to amended claim 1 above, and further in view of Krishnakumar et al. (5,178,289) [Krishnakumar '289].

Regarding Claim 13, Krishnakumar '503 in view of Itaba discloses all the limitations substantially as claimed, as applied to amended claim 1 above. The Krishnakumar '503 and Itaba combination does not expressly disclose that the closed air layers form an air cushion structure; however, the patent to Krishnakumar '289 - a hot filled container with label - discloses the closed air layers between the label and the recess form a cushion structure that absorbs impacts from outside for the container [Krishnakumar '289, Abstract Lines 15-19]. The air pocket help prevent the container from buckling. Krishnakumar '503, Itaba, and Krishnakumar '289 are all from the art of container bottles with labels attached on the sidewalls, and it would have been obvious

at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to modify the air layers between the label and the recesses in the Krishnakumar '503 and Itaba combination container to absorb the impacts on the container, as suggested by Krishnakumar '289, which "provides increased resistance to barreling by modifying select portions of the panel section to increase hoop (diameter) stiffness and reduce the hoop stretchability of the container." [Krishnakumar '289, Col. 2 Lines 3-6]

Regarding Claims 15 and 18, Krishnakumar '503 in view of Itaba discloses all the limitations substantially as claimed, as applied to amended claim 1 above. Although the combination discloses the container has a longitudinal axis [Krishnakumar '503, 102], the Krishnakumar '503 and Itaba combination does not expressly disclose annular groove portions extending about the longitudinal axis. However, the patent to Krishnakumar '289 discloses annular groove portions [Krishnakumar '289, Fig. 11] extending about the longitudinal axis on opposite sides of the plurality of sectioned recesses [Krishnakumar '289, Fig. 11], the annular groove portions being covered by the label [Krishnakumar '289, Figs. 10 and 11]. Krishnakumar '503, Itaba, and Krishnakumar '289 are all from the art of container bottles with labels attached on the sidewalls, and it would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to modify the sidewalls of the Krishnakumar '503 and Itaba combination container to have annular groove portions surrounded by the label, as suggested by Krishnakumar '289, which "provides increased resistance to barreling by modifying select portions of the panel

section to increase hoop (diameter) stiffness and reduce the hoop stretchability of the container." [Krishnakumar '289, Col. 2 Lines 3-6]

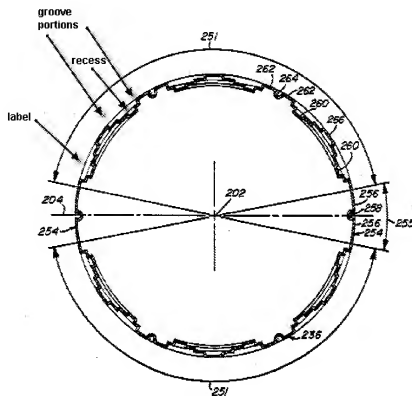


Fig. 11

7. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Krishnakumar '503 in view of Itaba in view of Krishnakumar '289 as applied to claim 15 above, and further in view of Hoffman.

Krishnakumar '503 in view of Itaba in view of Krishnakumar '289 discloses all the limitations substantially as claimed, as applied to claim 15 above. The Krishnakumar '503, Itaba, and Krishnakumar '289 combination does not expressly disclose that the

label is a heat-shrinkable label; however, the patent to Hoffman - a method of applying a plastic wrap to a container - discloses a heat-shrinkable label with a heat-sensitive adhesive agent [Hoffman, 40] that is applied to a container [Hoffman, 42, Col. 4 Lines 15-18]. The label is attached to the container. Krishnakumar '503, Itaba, and Hoffman are all from the art of bottles with labels applied on the sidewall, and it would have been obvious at the time of the invention to one of ordinary skill, with market forces driving one of ordinary skill to change the prior art, to modify the label in the Krishnakumar '503 and Itaba combination container assembly to be a heat-shrinkable label with a heat-sensitive adhesive, as suggested by Hoffman, in order to apply a label directly to the container [Hoffman, Col. 1 Lines 66-67].

8. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Krishnakumar '503 in view of Itaba as applied to amended claim 1 above, and further in view of Nojima et al. (2001/0038204) [Nojima].

Krishnakumar '503 in view of Itaba discloses all the limitations substantially as claimed, as applied to amended claim 1 above. The Krishnakumar '503 and Itaba combination does not expressly disclose that the label is a non-adhesive label; however, the publication to Nojima – a tubular label – discloses a label that is a non-adhesive label [Nojima, 1, Paragraph 28 Lines 5-10]. Krishnakumar '503, Itaba, and Nojima are all from the art of labels placed on bottle sidewalls, and it would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to modify the label on the Krishnakumar '503 and Itaba combination container to be a non-adhesive label, as suggested by

Nojima, in order to easily cut off the label from the bottle [Nojima, Paragraph 28 Lines 5-10].

Response to Arguments

9. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection. In response to applicant's argument that the Krishnakumar '289 and Itaba references fail to show certain features of applicant's invention regarding amended claim 1 {Remarks, Page 4 Lines 10-16} see Paragraph 4 of this office action to see how Krishnakumar '503 in view of Itaba meets the claim limitations set forth regarding amended claim 1.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: see PTO-892 Notice of References Cited.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT J. HICKS whose telephone number is (571)270-1893. The examiner can normally be reached on Monday-Friday, 8:30 AM - 5:00 PM, EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert J Hicks/
Examiner, Art Unit 3781

/Anthony Stashick/
Supervisory Patent Examiner, Art
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